

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:19-00149

DANIEL C. RUNION

O R D E R

The indictment in this case charges the defendant with possession of a firearm by a convicted felon. The firearm is a Smith and Wesson .38 caliber revolver. It was seized by officers executing a search warrant when it was found in plain view in a cabinet in a camper occupied by the defendant as his residence and being searched for items of child pornography.

The court conducted an evidentiary hearing on defendant's Motion to Suppress on September 11, 2019. It is noted that only the property seized is in issue and not the voluntariness of statements. The evidence and argument focuses on whether there was probable cause for issuance of the search warrant and whether the search warrant authorized the search of the camper on what the defendant claims is property adjoining

but not a part of the premises authorized to be searched. The court makes the following findings of fact and the conclusions of law that follow.

First Sergeant Kenneth Horrocks of the West Virginia State Police, who was assigned to the Internet Crimes Against Children section, received on March 28, 2019, a cyber tip from the National Center for Missing and Exploited Children from which it was determined that a Facebook user utilizing the name Daniel Runion distributed on January 30, 2019, a video of an unknown male engaging in sexual intercourse with an unknown female who appeared to be under the age of ten (10), which video was distributed by the Facebook user named Daniel Runion to another Facebook user ultimately learned to be in Lincoln City, Oregon. Sergeant Horrocks determined that a Daniel Runion, who was assigned a Facebook User ID, utilized IP address 173.80.118.13 in making the distribution. From an administrative subpoena to Suddenlink Communications for that IP address, Sergeant Horrocks learned that the IP address was assigned to Sherry Runion with a road address of 4157 Seng Creek Road, Whitesville, West Virginia. Sergeant Horrocks then conducted an address search for the 4157 address from which he learned that Daniel Runion, born in 1985, and Crawford Runion,

born in 1955, both previously utilized that address. All of the foregoing set forth in this paragraph was incorporated in the Affidavit of Sergeant Horrocks furnished to a Magistrate in Boone County, West Virginia, on April 30, 2019, wherein a search warrant for the premises of 4157 Seng Creek Road was sought.

On April 26, 2019, Sergeant Horrocks contacted Sergeant Jennifer Price of the West Virginia State Police and requested her to conduct surveillance of the 4157 Seng Creek Road address. On that same date Sergeant Price advised that she had spoken to a woman, whose name was unknown to her, at 4157 Seng Creek Road, who advised that her son resided in the camper behind the house at that address. Sergeant Price provided Sergeant Horrocks with photographs of each residence, one being a house described as a single story wood structure with cream/yellow vinyl siding and a shingled roof with a covered front porch and the other being a camper described as a white dual axel with a red stripe on the side. All of the foregoing information in this paragraph is also contained in Sergeant Horrocks' Affidavit seeking a search warrant. Sergeant Horrocks concluded, based on the information at hand, that the camper was the place where "Daniel Runion was believed to be residing," and included that statement in his Affidavit.

In the course of reaching that conclusion, Sergeant Horrocks, knowing Daniel Runion had utilized 4157 as a mailing address, ran a background check on him and learned that Daniel Runion was on supervised release for a federal child pornography conviction that was similar to the crime being investigated by him and which was linked to the property at 4157. When Sergeant Horrocks considered that the woman on the porch of the residence said her son lived in the camper behind the house he reasonably assumed, in view of all the information he had assembled, that the woman was the mother of Daniel Runion and that she was advising Sergeant Price that Daniel Runion resided in the camper. He was also aware that an IP address is not for a particular computer or even a single residence inasmuch as Wi-Fi can be utilized by multiple people in or around a house, including a nearby camper.

The Affidavit and Complaint for Search Warrant listed the premises to be searched as the premises located at 4157 Seng Creek Road, Whitesville, Boone County, West Virginia. The premises were further described as follows:

The residence is described as a single story wood construction structure with cream/ yellow vinyl siding and a shingled roof. Residence has a covered front porch with a concrete floor. The camper is described as a white duel [sic] axle with red stripe on the side. A

photograph of Mr. [sic] this dwelling and camper is attached to this affidavit.

This premises is further portrayed and described in the photograph that is attached to this complaint for search warrant.

The premises to be searched also included any and all yards, outbuildings, storage areas, motor vehicles, recreational vehicles, motor homes, vessels, garages, carports, sheds, animal cages or houses and mailboxes assigned, located at or port of the premises/ curtilage described in the first paragraph of this section.

Two color photographs were attached, one of the house and one of the camper.

The Affidavit and Complaint also set forth the property to be seized which, inter alia, included the following:

1. Any and all books, magazines, pictures, negatives, slides, graphic representations, images, motion pictures, videos, films portraying or depicting minors engaged in sexually explicit conduct, whether on paper, stored on magnetic or optical media, including information stored within a computer or digital device.

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5. Any and all data storage media that contains or may contain documents, files, images or data related to the offenses under investigation.
  - a. This media includes, but is not limited to, magnetic tapes, optical discs (CDs / DVDs, etc.), cassette tapes, magnetic disks, memory cards and removable drives and discs.

Based on the information within the affidavit, the Magistrate had ample probable cause to issue the search warrant on April 30, 2019, and it was executed that same date. When on April 30, 2019, First Sergeant Horrocks and Sergeant Price went to 4157 to execute the search warrant they went directly to the camper. They found that in the few days that had elapsed since Sergeant Price had taken the photographs, the camper had been moved from behind the house to a point beside the house. The camper was situate within three feet of a carport that was within three feet of the house. Because the camper met the identical description of the camper that had been photographed behind the house, including insulation running down the side of the camper, and inasmuch further as the space where the camper had been was vacant, they recognized it as the same camper and searched it. They found no monuments or markers or fences or the like to indicate that the camper was on any property other than the premises at 4157, nor is such a delineation found in the photograph of the removed camper.

At the camper Sergeants Horrocks and Price encountered Cristy Dunlap who identified herself as the fiancé of Daniel Runion. Although a few days later the officers learned that Ms. Dunlap was heard to say that the camper was located not on the

premises of 4157 but on adjacent property that was said to be 4119, that contention was not made known on the date the search warrant was executed by Ms. Dunlap or by Daniel Runion when he arrived from work a couple of hours or so after the officers arrived at the scene of the search at 6:00 p.m.

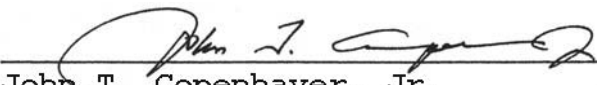
Inasmuch as the camper was specifically described in the search warrant as an object of the search and remained immediately adjacent to the house at the 4157 address, it may be deemed a part of the premises authorized to be searched even if it were ultimately determined that the camper was entirely situate on property with an address of 4119 Seng Creek Road.

In any event, inasmuch as the two officers executing the warrant had every reason to believe that the removed camper was within the premises at 4157 to be searched, the officers can readily be said to have acted in good faith in making the search of the camper under the search warrant issued by the Magistrate.

It is accordingly ORDERED that the Motion to Suppress be, and hereby is, DENIED.

The Clerk is directed to forward copies of this order to the defendant, all counsel of record, the United States Probation Department and the United States Marshal.

DATED: October 29, 2019

  
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John T. Copenhaver, Jr.  
Senior United States District Judge